



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

MSA

*271 Cadman Plaza East
Brooklyn, New York 11201*

January 12, 2010

By ECF

The Honorable Carol B. Amon
United States District court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Tanner
Criminal Docket No. 09 CR 087 (CBA)

Dear Judge Amon:

Sentencing is scheduled for January 13, 2010 on the defendant's plea to one count of trafficking in unauthorized access devices, in violation of 18 U.S.C. §§ 1029(a)(2) and (c)(1)(A)(i). The government respectfully seeks leave to supplement its January 8, 2010 sentencing submission in this matter as follows.

The government notes that the U.S. Probation Department ("Probation") concluded that the defendant's adjusted offense level under the United States Sentencing Guidelines ("USSG" or "the Guidelines") was 12. Probation began at offense level six, see USSG § 2B1.1(a)(2), and increased the offense level to 12 because the offense involved trafficking in unauthorized access devices, see USSG § 2B1.1(b)(10)(B)(i).

Using a different calculation, the defendant's plea agreement arrived at the same adjusted offense level. Like the presentence investigation report, the plea agreement reflected a base offense level of six, but added two points because the offense involved ten or more victims, see USSG § 2B1.1(b)(2)(A)(i), and four points for the loss attributable to the amount the government paid the defendant for the social security numbers it purchased from him during the investigation, see § 2B1.1(b)(1)(C).

Upon further study, the government recognizes that it should not have attributed a loss amount for the cost of the government's investigation. See USSG § 2B1.1 comment (n.3(D) (excluding from loss "costs to the government of . . . the prosecution and criminal investigation of the offense")). The government further acknowledges that it incorrectly failed to include the enhancement for trafficking in unauthorized access devices. See USSG § 2B1.1(b)(2)(A)(i).

The government respectfully submits that the total offense level nonetheless remains 12. Beginning with a base offense level of six and adding a two-point enhancement for ten or more victims (the holders of the stolen social security numbers), see USSG § 2B1.1(b)(2)(A)(i), and a two-point enhancement for trafficking in unauthorized access devices, see USSG § 2B1.1(b)(2)(A)(i), the resulting offense level is ten. Pursuant to Guideline § 2B1.1(b)(2)(A)(i), the total offense level is raised to twelve.

Respectfully Submitted,

BENTON J. CAMBELL
United States Attorney

By: _____/s/_____
Matthew S. Amatruda
Assistant U.S. Attorney
(718) 254-7012

cc: Gregory Watts, Esq.